

Exhibit 35

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2011 SPECIAL SESSION 1
VIRGINIA HOUSE OF DELEGATES
REDISTRICTING FLOOR DEBATES
Tuesday, April 5, 2011

Job No.: 81658

Pages 1 - 174

Transcribed by: Daphne Hurley

1 DELEGATES: Aye.

2 MR. SPEAKER: Those opposed "No." Substitute
3 agreed to. The gentleman from Suffolk.

4 DEL. JONES: Mr. Speaker and Ladies and
5 Gentlemen of the House, the substitute that is
6 before you for House Bill 5001 is the every 10
7 year bill that this body and the General Assembly
8 must consider required by the Constitution and
9 that is to reapportion and redistrict the 100
10 districts in the House of Delegates and the 40
11 districts in the Senate of Virginia.

12 The plan before you as amended, in my
13 opinion, is a fair amendment. It's representative
14 of all Virginians, including our minority
15 communities.

16 This past decade we had serious population
17 shifts within our Commonwealth. Yesterday I was
18 trying to explain, I didn't do a very good job of
19 explaining maybe the fall line. What I did last
20 night, I prepared a map for us to look at.

21 If you look at the red, red means bad. That
22 means you lost. Yellow means you lost as well.

1 So if you can see coming from Hampton Roads,
2 across up through Lynchburg and on up into the
3 great far reaches of southwest up in the hills
4 that are so beautiful and down to the great far
5 southwest, that is about 3.1 seats, I believe.

6 And blue is good. Blue means you picked up.
7 This little area up here picked up 2.88 seats. It
8 does not include Stafford, I do not believe. So
9 if you can look at the map and what -- you know,
10 like I said yesterday, you have to play it where
11 it lies in golf.

12 This is what the numbers tell you. The
13 numbers are very simple. You had some moderate
14 growth compared to the overall growth of Virginia
15 and coming up through central Virginia up into the
16 Valley. You had tremendous growth up in the
17 Northern Virginia area, especially Loudoun County
18 and Prince William County.

19 But you had in reference to the balance of
20 the Commonwealth tremendous loss of population
21 proportionally. So no, this was not a plan to go
22 just grab and put somebody in another district.

1 The map's pretty clear that you've got to move
2 three seats. We had over a 1., 1.7 seat loss here
3 in Hampton Roads. A 1.14 seat loss in Southwest
4 Virginia and about a, between these three about an
5 8/10s of a loss in that part of our Commonwealth.

6 Just kind of wanted to give a visual so we
7 can see what we have to work with when we're
8 actually drawing the lines, which is required by
9 our Constitution and the mandate of the
10 one-person, one-vote.

11 You know, much has been written about a
12 bipartisan map, bipartisan cooperation for the
13 last several years. This is my 14th year in this
14 body. 14th session. Excuse me. Not year. And I
15 have heard since I guess I arrived the need for a
16 bipartisan way of going about and redrawing the
17 lines for this Commonwealth that the people have
18 been left out of the process.

19 Well, we are the people's representative. We
20 stand every two years. This is the people's House
21 and every two years they decide if they want us to
22 come back or not. When I got here in 1998 I think

1 I was Number 95. Today I'm Number 28. That tells
2 you the turnover that we have had in this body in
3 seven election cycles.

4 So giving -- given, excuse me, the task at
5 hand and our Constitution the P&E Committee met a
6 week-and-a-half ago on Friday and considered
7 criteria and we had I believe five that we chose.
8 They were of population equality, the Voting
9 Rights Act, contiguity and compactness, single
10 member districts and communities of interest.

11 I mention these because we've heard these
12 terms kicked around in many different I guess
13 meetings, forums, et cetera, and I think all these
14 criteria are important as they do represent what
15 is the fabric of the Commonwealth, our people.

16 But there's a couple of things from my
17 perspective, and not just mine, but the
18 Constitution, that require our utmost attention.
19 Quite simply, the law; one-person, one-vote. That
20 trumps the Voting Rights Act; equal protection
21 under the 14th Amendment. That was our Number 1
22 criteria.

1 Number 2 was the Voting Rights Act. I can't
2 say that I can relate to what occurred back in the
3 '60s because I was just a young man, but I can
4 tell you that the Voting Rights Act is something
5 that has made a tremendous difference in America.

6 It has changed the fabric of this country
7 because all people have an opportunity to
8 participate in the process, as they should, as
9 they well should. We heard a speaker, several
10 speakers, one in Hampton and one yesterday, who
11 was talking about the factual that he defended the
12 rights of Americans when he felt like he did not
13 have that right, full rights accorded or forwarded
14 to him.

15 So Number 1 and Number 2 are the most
16 important things to the P&E Committee. They were
17 the most important things to me as I drew this
18 map.

19 Yesterday we had another bill that was before
20 us. That was I think the College Competition
21 Plan. The young man did a fabulous job. I
22 thought that he did exceptionally well. I think

1 the gentleman from Dickinson was laughing, he
2 says, "Chris, that was you 40 years ago." He was
3 being kind of polite. Maybe about 42 years ago,
4 but I wasn't going to tell him that.

5 Their Number 1 criteria was communities of
6 interest, contiguity and compactness. They're
7 Number 3 and Number 5 on our list. They're Number
8 3 and Number 5 for a reason; because one-person,
9 one-vote is the overarching principle of what this
10 country stands for in my opinion.

11 So with that in mind, as I -- as we went to
12 put a map together and criteria we took a
13 1 percent, plus or minus 1 percent deviation.
14 Some say, "Why did you do plus or minor 1 percent?
15 Why didn't you do plus or minus 2 percent from 10
16 years ago?"

17 Well, since the last time we were here with
18 this exercise there have been several court cases
19 that have spoken to that and when you look at the
20 criteria in the court case that was decided, it
21 was then Georgia. It was the Larios case. There
22 was an intentional concentration of one party and

1 the under population of another party. There were
2 four different sets of criteria that were
3 violated. And so what used to be the plus or
4 minor 5 percent safe harbor no longer exists.

5 And Virginia is very unique. We have a tight
6 timeline. People think we have rushed this
7 through. But I will tell from 10 years ago we got
8 the data on like the 7th or the 8th of May -- or
9 March. It made it very tight for us to get
10 everything done, passed, and to DOJ in time to be
11 able to have primary elections in the summer.

12 This year we got the data on I think the 8th
13 or something of February, which afforded us an
14 opportunity to have time for some public comment
15 and public hearings across the State with plans in
16 hand as we went to the public.

17 We had six public hearings last fall. As
18 chairman of the Reapportionment Committee we had a
19 public comment period the last week of session
20 that took the existing districts as they stood and
21 we pulled in the data that we -- that was given to
22 us by the Census, from the April 1st, 2010 Census.

1 Then we had a series jointly with the Senate,
2 eight public hearings. We received a bevy of
3 testimony from all walks of life; local-elected
4 officials, registrars, community leaders, members
5 of this body and the other body, private citizens
6 just concerned about their community.

7 So as we went through that process we heard a
8 lot of comments about communities of interest, but
9 also protecting the one-man, one-vote, or the
10 one-person, one-vote, and I think most importantly
11 not retrogressing with regards to the number of
12 majority/minority districts or the effective
13 voting strength of those communities.

14 We heard a gentlewoman from Petersburg
15 yesterday speak of an effective voting strength.
16 And when we looked at what was the best thing to
17 do, demographic shifts, population shifts caused a
18 reconfiguring of the map as has been alluded by
19 the gentleman from Henry and a article that was in
20 the Roanoke Times today and some individuals
21 yesterday.

22 I did note when I looked at the gentleman

1 from Henrico, I stayed up again late last night
2 and I studied the plans from the college students
3 and I did look at their plans and I did test, put
4 the test to it. Because it's not an academic
5 exercise for us. We're bound by the law. I know
6 when I was in college I used to always -- "Man,
7 these guys are really smart" when a professor
8 would tell me how things would work in the lab or,
9 you know, a theory.

10 When I got out in the real world sometimes it
11 didn't really work. Gosh, it makes sense in a
12 clean, sterile lab, but when you put it out in the
13 world it just doesn't happen. It just doesn't
14 work.

15 So I thought I would peel back the onion, as
16 we like to say back at home, and I looked at the
17 first place winner in the competition division.
18 They had 10 majority/minority districts. We
19 currently have twelve. Their deviation was plus
20 or minus 4 and 4.75 percent. A total deviation of
21 9.5 percent, where we have 2 percent.

22 And the low black voting age population of

1 registered votes, age eligible, I should say, was
2 50.6 percent to get 10 districts. If I wasn't
3 constrained by the law I could draw the prettiest
4 map in town. They could be concentric circles
5 like the gentleman from Henrico would love to
6 have. They could be compact and contiguous.

7 But we're not about compact and contiguous
8 when it trumps the rights and I think the ability
9 of the one-person, one-vote to be equally
10 represented.

11 The gentleman from Prince William has 190,000
12 people in his district today. The gentleman from
13 Henry has 68,000. He has enough for a Senate seat
14 within their deviation. Now, some would say that,
15 you know, that's not right. So that's why we're
16 here today to reset the maps for the next 10
17 years.

18 Then I looked at the University of Richmond
19 first place commission, the commission division
20 and they had seven majority/minority seats. They
21 had a 9.8 percent deviation and their low on the
22 percentage was 50.2 percent. The University of

1 Virginia, they were the second place in the
2 competition, had nine majority/minority seats.
3 They had a better deviation, 2.94 percent, but
4 they still were as low as 59.2 percent on the
5 voting age population.

6 Now, everything that I have seen in my 25
7 years in elected office has indicated to me that
8 in the minority community there, there are not as
9 many registered per hundred as there are in the
10 white community and then the turn out is different
11 as well.

12 So if you don't -- as we heard in our
13 testimony, and as Delegate Dance and Spruill and
14 some other individuals and leaders in the
15 community have said, if you don't have an
16 effective voting strength then there's a good
17 chance that over the time of 10 years you will see
18 a dilution of their ability and there is the
19 community.

20 Not that I am -- it's not my seat. I think
21 the gentleman from Chesapeake, Mr. Spruill, would
22 agree with this. He can probably get elected with

1 a lower percentage. But he represents the
2 community and the law states it's the community's
3 ability to elect the candidate of their choice.

4 So that's why the testimony led me when
5 drawing this map to not retrogress with the number
6 of seats, which we didn't, and to keep an
7 effective voting majority within each and every
8 district. We had to keep the core of those
9 districts, because I think that's very important,
10 and because of the population shifts you did see a
11 decrease in some of the percentages, but all were
12 above 55 percent.

13 So as I continued to work, work this map I
14 tried to do the best I could to meet the plus or
15 minor 1 percent. It's obvious to me that from
16 comments I received from colleagues who called me,
17 who stopped by my office, who wanted to discuss
18 their community and what the bill as introduced
19 last week would do to that community if it passed,
20 I said, "I'll be glad to sit down with each and
21 every one of you who want to meet with me" and I
22 did and I think through that process you have this

1 Census data?

2 DEL. JONES: I do know that the second floor
3 I believe compiled the '10 elections, the '09
4 elections and I think they just got the '08
5 elections put in their computer.

6 DEL. ARMSTRONG: Further questions,
7 Mr. Speaker.

8 MR. SPEAKER: Will the gentlemen yield?

9 DEL. JONES: I yield.

10 DEL. ARMSTRONG: Can the gentleman share with
11 me what data that he used in order to determine
12 the minority/majority district voter
13 participation, what retrogression data he would
14 have used in consideration in adopting a plan that
15 that would have had 12 minority/majority
16 districts?

17 DEL. JONES: I'd say to the gentleman that I
18 used the data as it was provided by the Census
19 Bureau to look at percent black population and
20 percent black voting age population.

21 DEL. ARMSTRONG: Further questions,
22 Mr. Speaker.

1 MR. SPEAKER: Will the gentlemen yield?

2 DEL. JONES: I yield.

3 MR. SPEAKER: The gentleman yields.

4 DEL. ARMSTRONG: Would the gentleman agree
5 with me that just determining, in determining a
6 majority-minority district is more than just
7 determining what population that one has to
8 analyze whether or not based on past voting
9 patterns whether or not the minority population
10 within such district has the ability to elect its
11 candidate of choice and that requires more than
12 just an analysis of raw Census data?

13 DEL. JONES: Mr. Speaker, I'd say to the
14 gentleman he may be giving me more credit than he
15 should. What I did, I listened to testimony that
16 was provided during the process of all these
17 public hearings that we had and I tried to respond
18 to the community and what they felt was an
19 effective percentage that they would need to have
20 and effective representation of the candidate of
21 their choice.

22 DEL. ARMSTRONG: Further questions,

1 Mr. Speaker.

2 MR. SPEAKER: Will the gentlemen yield?

3 DEL. JONES: I yield.

4 MR. SPEAKER: The gentleman yields.

5 DEL. ARMSTRONG: So the gentleman I guess is
6 suggesting that there was not an analysis of that
7 data that went into the preparation of the plan
8 that's related in HB 5001?

9 DEL. JONES: Mr. Speaker, I would say to the
10 gentleman that I gave him very succinctly what I
11 used. His question to me was what did I use in my
12 preparation of the plan to present to this body
13 and I just gave him the answer of the process.

14 DEL. ARMSTRONG: Further question,
15 Mr. Speaker.

16 DEL. JONES: I have not finished my answer.

17 DEL. ARMSTRONG: I apologize, Mr. Speaker.

18 DEL. JONES: I think it's called a PL. I
19 always get it backwards, the data that comes from
20 the Census Bureau. It has 264 categories. It's
21 got every iteration you can think of combination
22 of percentages. And simply what I looked at was

1 the existing core districts that were in place for
2 the 12 majority-minority districts and I saw that
3 in the 71st District in particular that the
4 majority percentages dropped from almost 60
5 percent to 50 percent.

6 And so in putting together a plan I felt
7 communities of interest were very important and
8 that the percent of black and black voting age
9 population were the two things that would drive
10 putting those districts back to a competitive
11 level where they might have retrogressed over the
12 10 years period.

13 DEL. ARMSTRONG: Further question,
14 Mr. Speaker.

15 Mr. Speaker: Will the gentlemen yield?

16 DEL. JONES: I yield.

17 Mr. Speaker: The gentleman yields.

18 DEL. ARMSTRONG: Can the gentleman tell me
19 whether he or any persons that worked with him in
20 the development of the plan that resulted in HB
21 5001 took into account any retrogress analysis
22 regarding minority performance in any of the 12

1 majority-minority districts that are part of HB

2 5001?

3 DEL. JONES: I would say to the gentleman I'm
4 not aware of any.

5 DEL. ARMSTRONG: Further question,
6 Mr. Speaker.

7 Mr. Speaker: Will the gentlemen yield?

8 DEL. JONES: Yes, sir.

9 Mr. Speaker: The gentleman yields.

10 DEL. ARMSTRONG: The gentleman just mentioned
11 that communities of interest were an extremely
12 important criteria. Would the gentleman say that
13 that was a more important criteria in the
14 development of the 12 majority --
15 majority-minority districts than would have been
16 the racial voting pattern and whether or not the
17 minority population of those districts can elect
18 their candidate of choice?

19 DEL. JONES: No, sir. I'd say to the
20 gentleman, as I stated in my opening remarks on
21 the bill itself, that the most important items
22 were one-person, one-vote plus or minus 1 percent

1 deviation, full compliance with the Voting Rights
2 Act, and communities of interest, while important,
3 are not the overarching, were not the overarching
4 driver of this plan.

5 DEL. ARMSTRONG: Further question,
6 Mr. Speaker.

7 Mr. Speaker: Will the gentlemen yield?

8 DEL. JONES: Oh, yes, sir, I yield.

9 Mr. Speaker: The gentleman yields.

10 DEL. ARMSTRONG: Could the gentleman tell me
11 though where in terms of development of the 12
12 majority-minority districts what were the most
13 important criteria that were considered of those
14 that were developed?

15 DEL. JONES: Mr. Speaker, I would say to the
16 gentleman there wasn't a most important criteria.
17 You know, I'm not a very sophisticated person.
18 I'm not the smartest guy in the room most of the
19 time. And I looked at what had happened over the
20 last 10-year period given the existing population
21 and demographic shifts and I tried to restore back
22 to the best of my ability to the levels that were

1 existing after House Bill 1 one passed in 2001.

2 DEL. ARMSTRONG: Further question,

3 Mr. Speaker.

4 Mr. Speaker: Will the gentlemen yield?

5 DEL. JONES: I yield.

6 Mr. Speaker: The gentleman yields.

7 DEL. ARMSTRONG: So if gentleman indicates
8 there was not a full retrogression analysis done,
9 how does, how can the gentleman assure us that the
10 12 majority-minority districts that are comprised
11 in HB 5001 are actually districts in which the
12 minority population is able to select its
13 candidate of choice?

14 DEL. JONES: Mr. Speaker, I would say to the
15 gentleman that typically as I understand it, that
16 is done in your process when you file with DOJ. I
17 had to look at given the tight time frame that we
18 had to deal with the percentage of black
19 population and the percentage of black voting age
20 population and that was the approach that I used.

21 10 years ago I don't -- didn't use the
22 methods that the gentleman is suggesting. I am

1 confident from the testimony in the community that
2 what is before you is a plan that will allow the
3 minority community to elect a candidate of their
4 choice based on the input received during the
5 public hearing process and from the individual
6 members of the Black Caucus and the black
7 community.

8 DEL. ARMSTRONG: Further question,
9 Mr. Speaker.

10 Mr. Speaker: Will the gentlemen yield?

11 DEL. JONES: Yes, sir.

12 Mr. Speaker: The gentleman yields.

13 DEL. ARMSTRONG: Well, would the gentleman
14 not agree with me that he had available to him the
15 resources of the Division of Legislative Services;
16 that if the gentleman had requested a full
17 retrogression analysis of the majority-minority
18 districts it could have been accomplished?

19 DEL. JONES: Mr. Speaker, I would say to the
20 gentleman that if he says so, I'll believe him.

21 DEL. ARMSTRONG: Further question,
22 Mr. Speaker.

1 Mr. Speaker: Will the gentlemen yield?

2 DEL. JONES: I yield.

3 Mr. Speaker: The gentleman yields.

4 DEL. ARMSTRONG: So the gentleman would not
5 dispute that statement, the affirmative statement
6 that I just made?

7 DEL. JONES: Mr. Speaker, I do not have
8 enough knowledge to agree or disagree. That is
9 his opinion. I certainly -- he certainly is
10 entitled to it.

11 DEL. ARMSTRONG: Further question,
12 Mr. Speaker.

13 Mr. Speaker: Will the gentlemen yield?

14 DEL. JONES: I yield.

15 Mr. Speaker: The gentleman yields.

16 DEL. ARMSTRONG: The gentleman alluded in his
17 answer that given the "time constraints." Is the
18 gentleman suggesting that there was insufficient
19 time in which to conduct a full analysis of the
20 majority-minority districts in their population
21 and whether they're able to select their candidate
22 of choice?

1 DEL. JONES: No, sir, that was not what I was
2 answering to his question. He's a very
3 accomplished attorney and I understand where he's
4 going with his questioning. My comment was just a
5 statement of fact.

6 As a matter of fact, let me read -- gosh, I
7 think I've got a couple quotes here that might
8 help as we look at the, what we're having to deal
9 with. This is Bob Gibson from the Sorenson
10 Institution. "The Voting Rights Act for all
11 practical purposes guarantees that districts with
12 a majority of black or Hispanic residents stay
13 about as strongly majority-minority or
14 considerably Hispanic for the next 10 years as
15 they were during the past decade."

16 And I think that that's pretty obvious to
17 those who follow the process; that if you don't
18 get it back as best as you can to the previous
19 strengths that there's a chance that they might
20 not perform as they should. Hence, the valuable
21 nature I think of the testimony that we received
22 from the minority community during the whole

1 DEL. ARMSTRONG: Well, in determining
2 compliance with the Voting Rights Act and whether
3 or not these majority-minority districts are able
4 to select its candidate of choice, did the
5 gentleman do anything more than speak with the
6 members that may represent those particular
7 districts at the present time?

8 DEL. JONES: Yes, sir. I spoke with several
9 citizens along the way who came to see me or
10 called me and I listened to what they had to say.
11 We had individuals at the public hearings who
12 stated their concern; that the dilution of the
13 percentage of voting age population would greatly
14 diminish their chance to be able to elect a
15 candidate of their choice.

16 DEL. ARMSTRONG: Further question,
17 Mr. Speaker.

18 Mr. Speaker: Will the gentlemen yield?

19 DEL. JONES: I yield.

20 Mr. Speaker: The gentleman yields.

21 DEL. ARMSTRONG: But the gentleman did not
22 include any type of retrogression analysis? And

1 by retrogression analysis I would mean an analysis
2 of voting patterns of particular minority
3 districts over, say, the last five to 10 years
4 that would indicate that those districts would
5 continue to be able to select its candidate of
6 choice.

7 DEL. JONES: Mr. Speaker, I'd said to the
8 gentleman of the plans that have been submitted
9 and/or circulated around that were complete and
10 total plans, the plan that is before you, in my
11 opinion, fully complies with the Voting Rights Act
12 as 55 percent or higher, which is testimony that
13 we heard during the public hearings of percentage
14 voting age population.

15 DEL. ARMSTRONG: Further question,
16 Mr. Speaker.

17 Mr. Speaker: Will the gentlemen yield?

18 DEL. JONES: I yield.

19 Mr. Speaker: The gentleman yields.

20 DEL. ARMSTRONG: But again, just to make
21 certain I'm clear, that the gentleman believes it
22 is in compliance, but the gentleman didn't, he or

1 his colleagues or members of the majority party,
2 develop any empirical data that would tend to
3 establish that?

4 DEL. JONES: I would say to the gentleman,
5 Mr. Speaker, that I think anyone who thinks they
6 know exactly what will be in full compliance
7 probably hasn't been doing this very long.
8 Because the process is that you have to submit to
9 the voting right -- the section of the Department
10 of Justice, the voting section, for preclearance.
11 If there were certain litmus tests that had to be
12 met you would not need to have preclearance.

13 So I think I've answered the gentleman's
14 questions with regards to the retrogression
15 analysis and I'd be glad to answer any other
16 questions that he would have, but I have finished
17 answering those questions.

18 DEL. ARMSTRONG: Further question,
19 Mr. Speaker.

20 Mr. Speaker: Will the gentlemen yield?

21 DEL. JONES: I yield, yes, sir.

22 Mr. Speaker: The gentleman yields.

1 DEL. ARMSTRONG: Is the gentleman familiar
2 that the Governor of the Commonwealth, Robert
3 McDonnell, appointed a commission to develop a
4 number of redistricting plans for the House of
5 Delegates, the State Senate and congressional
6 districts?

7 DEL. JONES: I am, I would say to the
8 gentleman.

9 DEL. ARMSTRONG: Further question,
10 Mr. Speaker.

11 Mr. Speaker: Will the gentlemen yield?

12 DEL. JONES: I yield.

13 Mr. Speaker: The gentleman yields.

14 DEL. ARMSTRONG: I would ask the gentleman if
15 he is familiar that, that two of the plans issued
16 by the Commission dealt with the redrawing or
17 redistricting of House of Delegates lines?

18 DEL. JONES: I would say yes, sir, I am
19 aware.

20 DEL. ARMSTRONG: Further question,
21 Mr. Speaker.

22 Mr. Speaker: Will the gentlemen yield?

1 DEL. JONES: I yield.

2 Mr. Speaker: The gentleman yields.

3 DEL. ARMSTRONG: Is the gentleman aware that
4 one of those two plans developed by the Commission
5 created a 13th majority-minority district?

6 DEL. JONES: I would say to this the
7 gentleman, Mr. Speaker, yes, I am.

8 DEL. ARMSTRONG: Further question,
9 Mr. Speaker.

10 Mr. Speaker: Does the gentlemen yield?

11 DEL. JONES: I yield.

12 Mr. Speaker: The gentleman yields.

13 DEL. ARMSTRONG: Can the gentleman explain to
14 me the reasonings in his putting together HB 5001
15 as to why he did not create a 13th
16 majority-minority district?

17 DEL. JONES: Mr. Speaker, I'd say to the
18 gentleman I think he's answered his own question
19 with his line of questioning earlier about an
20 effective -- I think he's conflicted or he's
21 confused in his approach here.

22 I think his line of questioning earlier was

1 taking into the fact that I didn't do a high
2 enough percentage to be -- to ensure that one
3 would elect, a community could elect the candidate
4 of their choice. I have looked at the 12 and the
5 13th plan, Option 1 and Option 2, and neither one
6 of those plans met what I think from the testimony
7 that we heard throughout this process that the
8 effective voting age population needed to be north
9 of 55 percent. Each of those plans had a low of I
10 think 52, 52 percent.

11 And from my experience in 25 years of running
12 for office, having gone door-to-door, I know from
13 analyzing quote, unquote my election results where
14 there's a lower voter turn out, and in my opinion
15 based on what we had heard from testimony,
16 something of in the 52 percent, I do not think
17 would be an effective voting strength for that
18 community to be able to elect their candidate of
19 choice.

20 DEL. ARMSTRONG: Further question,
21 Mr. Speaker.

22 Mr. Speaker: Will the gentlemen yield?

1 DEL. JONES: I yield.

2 Mr. Speaker: The gentleman yields.

3 DEL. ARMSTRONG: Can the gentleman cite to me
4 any empirical data on any of the 12th or potential
5 13th minority-majority district that would
6 indicate that something less than a 55 percent
7 minority-majority district would not allow the
8 minority community in those districts to elect
9 their candidate of choice?

10 MR. JONES: Mr. Speaker, I think I've
11 answered this question earlier and I'm not going
12 to -- it is my opinion from what I have
13 experienced and my belief and the testimony
14 received from the community that they would like
15 to have the best possible opportunity to elect the
16 candidate of their choice and that further
17 dilution of the voting age population would do,
18 would do a couple of things, but maybe allow them
19 not to have the ability to elect the candidate of
20 their choice either in a primary or in a general
21 election.

22 DEL. ARMSTRONG: Further question,

1 Mr. Speaker.

2 MR. SPEAKER: Will the gentleman yield?

3 DEL. JONES: I yield.

4 MR. SPEAKER: The gentleman yields.

5 DEL. ARMSTRONG: So the gentleman has stated
6 that in his opinion nothing below a 55 percent
7 minority-majority district would be sufficient for
8 the minority community to elect its candidate of
9 choice?

10 MR. JONES: I'm not sure he was listening
11 closely. I said it's my opinion from the
12 testimony that was received during our public
13 hearings that the community felt that they needed
14 a percentage of 55 percent or better. That was my
15 response to the gentleman.

16 DEL. ARMSTRONG: Further question,

17 Mr. Speaker.

18 MR. SPEAKER: Will the gentleman yield?

19 DEL. JONES: I yield.

20 MR. SPEAKER: The gentleman yields.

21 DEL. ARMSTRONG: The testimony the gentleman
22 is referring to, was that testimony that was

1 received during official public hearings of the
2 House Privileges & Elections Committee?

3 MR. JONES: Yes, sir, it was. I believe it
4 was probably in the court record. We had a court
5 reporter at all of our meetings.

6 DEL. ARMSTRONG: Further question,
7 Mr. Speaker.

8 DEL. JONES: I yield.

9 MR. SPEAKER: The gentleman yields.

10 DEL. ARMSTRONG: So the gentleman is stating
11 that the entire basis of his opinion was garnered
12 at those public opinion -- public hearings in
13 which evidence was received and the record and
14 transcript made?

15 MR. JONES: No, sir, I didn't say the entire.
16 The entirety was not.

17 DEL. ARMSTRONG: Further question,
18 Mr. Speaker.

19 MR. SPEAKER: Will the gentleman yield?

20 DEL. JONES: I yield.

21 MR. SPEAKER: The gentleman yields.

22 DEL. ARMSTRONG: Can the gentleman share with

1 Mr. Speaker.

2 MR. SPEAKER: Will the gentleman yield?

3 DEL. JONES: I would yield.

4 MR. SPEAKER: The gentleman yields.

5 DEL. ARMSTRONG: So while the gentleman
6 received testimony from various groups, the
7 gentleman did not affirmatively contact any such
8 groups?

9 MR. JONES: I would say to the gentleman that
10 I did not affirmatively contact anybody, mainly
11 because I was trying to put together a map and a
12 plan that would meet those two tenants; the
13 one-person, one-vote and the Voting Rights Act.

14 DEL. ARMSTRONG: Further question,
15 Mr. Speaker.

16 MR. SPEAKER: Will the gentleman yield?

17 DEL. JONES: I yield.

18 MR. SPEAKER: The gentleman yields.

19 DEL. ARMSTRONG: I would say to the gentleman
20 that one of my concerns has been that this process
21 is rushed and that there has been insufficient
22 time for the public to comment once plans were

1 MR. SPEAKER: Will the gentleman yield?

2 DEL. JONES: I yield, yes, sir.

3 MR. SPEAKER: The gentleman yields.

4 DEL. MORRISSEY: Prefacing my question with a
5 comment that I've got the empirical data in front
6 of me of every single district and the percentage
7 of VAP, black voting age population, with the
8 House plan as compared with the percentage of the
9 black voting population in the Commission's plan,
10 can you tell me why in every single one of the
11 districts, with the exception of two or three that
12 are tied, the population in the House plan did not
13 reach the same number as the population of the
14 black voting age population in the Commission's
15 plan?

16 MR. JONES: Mr. Speaker, I must admit to the
17 gentleman -- I told my wife I wouldn't use any
18 versus from songs, so I won't. I'm a little dazed
19 and confused. I'm looking here at the -- what I
20 have for the Commission plan, Option 1, and I have
21 a high percentage of black voting age population
22 of 56.8 and the low of 52.7.

1 Now, I can tell the gentleman that in House
2 Bill 5001 that is substituted before this body,
3 we -- every single, solitary district
4 majority-minority is over 55 percent. Now, I know
5 I wasn't that good at math, I'm not a math major,
6 but from my reading of this and my double-checking
7 it, that's what I have.

8 So maybe we just have -- you know, numbers
9 can say different things to different people and I
10 can stand to be corrected based upon what I've had
11 available to me throughout this process and I
12 have -- and I am detail person. I double-check it
13 twice. You know, I'm not a very good carpenter,
14 so I always measure three times before I cut one
15 time.

16 So I'm looking at it and I do not agree with
17 that statement. As a matter of fact, the average
18 black voting age population is 54.4 percent in the
19 12 plan from the Commission.

20 DEL. MORRISSEY: Would the gentleman yield
21 for another question?

22 MR. SPEAKER: Will the gentleman yield?

1 DEL. MORRISSEY: Given that the gentleman
2 then studied the plan, I would ask him does he
3 distinguish as there being a difference between a
4 55 BVAP versus 53 BVAP?

5 MR. JONES: Mr. Speaker --

6 DEL. MORRISSEY: That is; does the gentleman
7 consider that a significant and meaningful
8 difference?

9 MR. JONES: Mr. Speaker, I would say based on
10 the testimony that we have, that we heard during
11 the process I would say yes, based on the
12 testimony from the community.

13 DEL. MORRISSEY: Would the gentleman yield
14 for another question?

15 MR. SPEAKER: Will the gentleman yield?

16 DEL. JONES: I yield.

17 MR. SPEAKER: The gentleman yields.

18 DEL. MORRISSEY: Is the gentleman aware that
19 the Governor's Bipartisan Commission that, as he
20 already agreed, constituted constitutional
21 scholars, as well as other academicians and
22 professor and judges, were able to create a 13th

1 for another question?

2 MR. SPEAKER: Will the gentleman yield?

3 DEL. JONES: I yield.

4 MR. SPEAKER: The gentleman yields.

5 DEL. MORRISSEY: With respect to BVAPs, I
6 note that the gentleman has repeatedly at least
7 seven or eight times used the phrase "according to
8 testimony that we received."

9 Notwithstanding that, and given the fact
10 that the gentleman just referred to the
11 gentlewomen from Alexandria, Ms. Herring, Delegate
12 Herring, who was able to win a district that had
13 less than 50 percent BVAP, would you not agree
14 that it is possible to elect an African-American
15 representing 53 BVAP and not the mandated 55 BVAP?

16 MR. JONES: Mr. Speaker, I would say to the
17 gentleman that I have in my 25 years of being in
18 office -- when I first went to City Council we
19 actually had an African-American who was
20 representing now the fast growing area of
21 Bennett's Creek in the Sleepy Hole Borough. And I
22 would say yes.

1 I also had the chance when I served on the
2 City Council to have a, a majority-minority
3 district under perform and to elect a white
4 person. Of course, four years later they elected
5 a candidate of their choice. One would say that
6 both were the candidates of choice.

7 So I would say to the gentleman, I would
8 leave it to his devices to come to a conclusion.
9 My job was to do the best I could to make sure we
10 complied fully with the Voting Rights Act.

11 DEL. MORRISSEY: Would the gentleman yield
12 for another question?

13 MR. SPEAKER: Will the gentleman yield?

14 DEL. JONES: I yield.

15 MR. SPEAKER: The gentleman yields.

16 DEL. MORRISSEY: Not withstanding whatever
17 conclusions that I come to, I'm more interested in
18 the conclusions that you or the members of the P&E
19 came to.

20 Would you not agree that if there is a
21 district that was somewhere around 51 BVAP or 52
22 BVAP that they ought to have a, the opportunity to

1 MR. SPEAKER: The gentleman yields.

2 DEL. MORRISSEY: Is the gentleman aware that
3 one of the student's plans that complied with
4 compactness, contiguity, community of interest
5 equal population and the Voting Rights Act had a
6 county/city split that was half of what HB 5001
7 was?

8 MR. JONES: Mr. Speaker, I can't speak to
9 what that plan was. I would just let the
10 gentleman know that once again there was a reason
11 that I had -- that we in the P&E Committee had
12 communities of interest, Number 5. Because
13 Number 1 was one-person, one-vote. Number 2 was
14 compliance with the Voting Rights Act.
15 Contiguity, compactness are required by I think
16 our Constitution and code and single member
17 districts we did -- we went there and did that
18 back 30 years ago. So it was Number 5 for a
19 reason.

20 DEL. MORRISSEY: Would the gentleman yield
21 for another question, Mr. Speaker?

22 MR. SPEAKER: Will the gentleman yield?

1 floor.

2 DEL. DANCE: Thank you. As a member of the
3 House Redistricting Committee I support House Bill
4 5001 in its substitute form as we have before us
5 and it's again for more than just the one reason
6 that it mirrors the -- or doesn't mirror, but it
7 does support the 12 minority districts that we
8 have now and it does provide that 55 percent
9 voting strength that I was concerned about as I
10 looked at the model and looked at the trending as
11 far as what has happened over the last 10 years.

12 And one of the best examples I can give for
13 that and most concern was the area that was
14 mentioned prior and that is Delegate Tyler's area
15 in the 75th. Because Delegate Tyler is an
16 African-American that now finally sits in a
17 minority seat that's been there for years, but
18 there have been three tries by minorities in the
19 past to win that seat and they were not able to do
20 so.

21 And if that district is below that 55 percent
22 voting strength, then I don't think she would be

1 able to hold the seat that she now holds today and
2 I was really, really concerned about that. That
3 issue was addressed and it is now in that House
4 Bill 5001 and I'm glad it's there.

5 That is the -- and for the rest of the
6 house -- or the minority districts, it shows 55
7 percent voting. And it's voting. Not just people
8 being there, but the effective opportunity for
9 them to hold minority seats. And not just for us
10 incumbents that are in the seats, but for those
11 that would come after us.

12 And as was mentioned by Delegate Hope and he
13 was asking about the 27th, the 69, the 70, 71,
14 they represent minority seats. Not the 27, but
15 the 69, the 70, the 71; they represent minority
16 seats (inaudible words) even though minorities
17 might not be in there. And if we are to preserve
18 the rights for minorities to have a voice, as to
19 whether or not they want to have a minority serve
20 them or someone of the majority persuasion, that
21 they have that choice. And they could lose that
22 choice if they did not have the voting strength

1 **DEL. ARMSTRONG:** Mr. Speaker, Ladies and
2 Gentlemen of the House, I think that I oppose HB
3 5001 and there are public policy reasons why I
4 would do so, but I'm not going to talk about those
5 on engrossment.

6 What I would like to restrict my comments to
7 is what I perceive as a legal analysis of where we
8 are. Now, regardless of the comments that have
9 been made here on the floor, Virginia is subject
10 to the Voting Rights Act, Sections 2 and Section
11 5. Regardless of whether we've talked to one
12 another, not talked to anyone, have extended
13 courtesies, not extended courtesies; it doesn't
14 matter. We either comply with the Voting Rights
15 Act. The bill is flawed. It will not be approved
16 at the Justice Department or, let's not forget,
17 that the Attorney General has the option of filing
18 in federal court in the District of Columbia.

19 What concerns me, Mr. Speaker, in listening
20 to the debate here today is there appears to have
21 been a failure to analyze the 12 minority-majority
22 districts in terms of its voting pattern.

1 Certainly the gentleman from Suffolk, who clearly
2 I think from the discussion here today, oversaw
3 the bill and the process has heard a number -- or
4 has had a number of public hearings where he
5 listened to constituents, but that is antidotal
6 information.

7 Without a, a, a, an analysis of retrogression
8 of the voting patterns one can't tell, for
9 example, whether or not a 53 percent minority
10 district might actually be able to elect its
11 candidate of choice. Somewhere else perhaps only
12 57 or 58 percent. And the gentleman has
13 enunciated an arbitrary figure of 55 percent and
14 nowhere that I can find in the case law or in the
15 decisions that have come out of the Department of
16 Justice have indicated that that is a magic
17 number. It is arbitrary.

18 And that there appears to have been a failure
19 to do this retro, retrogression analysis. We
20 don't know whether or not these districts have
21 been, I'll just the terms cracked or packed, which
22 is the slang term for diluting minority districts

1 or putting too much minority population in there.

2 And I think that the reason that we have
3 gotten to this point is there's been insufficient
4 time for this analysis to be conducted. That this
5 process has been rushed. We all know that
6 Virginia by having -- virtue of the fact that our
7 elections are in the off year and that occurs in
8 2011 immediately upon the presentation of the
9 Census data.

10 Still, though, we're, we're essentially
11 looking at one week from the time that these, this
12 plan was developed until it's voted on. And with
13 insufficient time for various civil rights
14 organizations or other interest groups to conduct
15 an analysis, what we don't know here today is
16 whether or not a 13th or perhaps 14th minority
17 district could be created and done so without
18 dilution of the 12 existing minority-majority
19 districts.

20 Certainly no one -- I nor anyone else is
21 suggesting that we dilute the 12 existing ones,
22 but if a 13th and certainly a 14th can be

1 created -- I received late yesterday information
2 that a 14th district might be able to be created
3 in Southside, Virginia with, with a 50.25 minority
4 population. That without a retrogression analysis
5 one would not know, that may very well -- that
6 that district be able to elect its candidate of
7 choice.

8 And so regardless of how we got to this
9 point, if this bill doesn't comply with Sections 2
10 and 5 of the Voting Rights Act, this bill is going
11 to be invalidated by DOJ or the first federal
12 court that deals with it. And I think we -- and I
13 don't demean the gentleman. I don't dispute him
14 at that he stayed till 2:00 in the morning working
15 on this, but if you haven't done the necessary
16 analysis to determine what the minority impact is
17 on the minority community, we have failed and this
18 plan has serious potential of being rejected.

19 The other thing that lastly I would say, that
20 the gentleman from Arlington and his questions, in
21 my review of particularly districts in northern
22 Virginia there appears that Republican districts

1 proposal, House Bill 5001, offer minorities the
2 same or even a greater opportunity to elect
3 candidates of choice as the current plan. I don't
4 believe that it does, Mr. Speaker. I think it
5 racially dilutes some competitive districts, and
6 case is in part is in Northern Virginia, and I
7 urge my colleagues to reject engrossment.

8 Thank you, Mr. Speaker.

9 MR. SPEAKER: The gentleman from Henrico,
10 Mr. Morrissey.

11 DEL. MORRISSEY: Thank you, Mr. Speaker.

12 DEL. MORRISSEY: Mr. Speaker, I rise to speak
13 in opposition to House Bill 5001.

14 MR. SPEAKER: The gentleman has the floor.

15 DEL. MORRISSEY: Thank you, Mr. Speaker. I'd
16 also urge the body to vote against 500-, HB 5001.
17 While during my remarks and others we spoke about
18 compactness and we spoke about communities of
19 interest. My focus, likewise, would be on
20 complying with the Voting Rights Act. I think the
21 empirical evidence is somewhat overwhelming,
22 Mr. Speaker, that we could produce effectively a

1 13th and a 14th majority-minority district.

2 The 14th majority-minority district would be
3 50.25 black voting age population. As the
4 minority leader said, the figure of 55 percent is
5 something that was pulled out of the sky. We have
6 people in this body that are elected with 53 and
7 as the delegate from Suffolk said, even under 50
8 percent.

9 As my good friend and brother from
10 Chesapeake, Delegate Spruill said, perhaps
11 mistakenly, the goal isn't to elect people of
12 color. The goal is pursuant to the Voting Rights
13 Act to have enough majority-minority districts so
14 that there is the opportunity to elect people of
15 color. There is the opportunity under the
16 Governor's plan, Mr. Speaker, that was decidedly
17 nonpartisan. It was --

18 MR. SPEAKER: The House will come to order.

19 DEL. MORRISSEY: It constituted
20 constitutional scholars who paid attention to the
21 U.S. Constitution and the State Constitution.
22 There were academics who went around the State

C E R T I F I C A T E

I, Daphne S. Hurley, Court Reporter,
certify that I transcribed from digital recording
of the proceedings held on the 5th day of April
2011.

I further certify that to the best of my
knowledge and belief, the foregoing transcript
constitutes a true and correct transcript of the
said proceedings. Given under my hand this 3rd
day of May 2015.



Daphne S. Hurley

My commission expires: August 20, 2018

Notary Public in and for
the State of Maryland

Exhibit 38

Exhibit 38

From: Chris Marston <chris.marston@gmail.com>
Sent: Wednesday, April 6, 2011 4:09 PM
To: scj <scj@schrisjones.com>
Subject: AP_Bl

Chris,

I ran the numbers on HB 5001 as engrossed--

AP_BVAP

Avg-58.2%

Hi-61.9%

Low-55.7%

BVAP

Avg-57%

Hi-60.14%

Low-55.02%

AP_ means all parts, so it includes anyone who checked Black in whatever combination with any other races.

It will take a considerable amount of time to run it for other plans.

Thanks,
Chris

Exhibit 39

Exhibit 39

PRIVILEGES AND ELECTIONS

REDISTRICTING

SENATE HEARING

BEFORE: SENATOR JANET HOWELL, CHAIRWOMAN

PLACE: COMMONWEALTH OF VIRGINIA
GENERAL ASSEMBLY BUILDING
RICHMOND, VIRGINIA 23218

DATE: APRIL 7, 2011

TIME: 2:00 p.m.

Crane-Snead & Associates
4914 Fitzhugh Avenue, Ste 203
Henrico, Virginia 23230
804-355-4335

Crane-Snead & Associates, Inc.

1 5.

2 MADAM CHAIR: Sure.

3 SENATOR VOGEL: When Senator Watkins and I
4 undertook to do a map, we were basically going through the
5 same exercises that anybody would go through, and that was
6 to come up with a map that we felt was as clean as
7 possible, was as considerate of the parameters set forth
8 in the law, and trying, really, as a test, to see, could
9 we get, for example, half a percent deviation districts
10 that we believed were -- that met those criteria.

11 So when it came to Section 5 -- I just want to be
12 very clear about this -- that we believed that that was
13 not really a question that was subject to any debate. The
14 lowest amount of African Americans in any district that
15 has ever been precleared by the Department of Justice is
16 55.0. And I think there is a legitimate reason for that,
17 and that reason is if you want to afford minority
18 districts the opportunity to elect a minority to the House
19 or to the Senate. If you go back and you look over time
20 in cases where legislators have argued that you can go
21 below that percentage, the outcomes have been, in fact,
22 pretty stark. And in these cases, African Americans have
23 not been elected.

24 And I have -- if you'll just bear with me for a
25 moment, I'm going to provide you with a couple of

1 examples. Senator Lucas in 2001 had a special election
2 in the 4th Congressional District, where the district was
3 over forty percent African American, but not over fifty
4 percent, that failed to elect Senator Lucas. And while
5 that's a much lower number than we're talking about,
6 that's relevant.

7 In 1991, where her district was 56 percent black
8 voting-age population, she was --

9 MADAM CHAIR: Excuse me. Was that
10 congressional?

11 SENATOR VOGEL: Yes, that was congressional.

12 MADAM CHAIR: Thank you.

13 SENATOR VOGEL: In 1991 Senator Lucas had an
14 election where her district was 56 percent black voting-
15 age population, or BVAP, and she won that race. But, bear
16 in mind, she only won that with 51.8 percent of the vote.
17 So that's 56 percent.

18 In Georgia in 2002 -- and I think this is the one
19 that's most instructive, and this is the one that we
20 considered carefully in trying to determine, you know, are
21 we going to break any new ground here at 55 percent, or
22 should we not be consistent with the law and consistent
23 with what the Department of Justice has said. That is, in
24 Georgia, in 2002, the Senate majority plan dropped the
25 black voting-age population of the Black Senate majority

1 leader's district to 51 percent BVAP, that's black voting-
2 age population, and dropped the black voter registration
3 percentage to about 49.5 percent.

4 Here is what's critical there. The Senate
5 majority leader lost his election after he testified that
6 his district would, in fact, elect an African American. I
7 think that's very relevant here. There was no magic in us
8 trying to break any new ground here. We were just simply
9 following what, I believe, is not subject to any question;
10 that is, as of today, the lowest percentage that the
11 Department of Justice has ever approved is 55.0.

12 Thank you very much.

13 SENATOR MCEACHIN: Madam Chair.

14 MADAM CHAIR: Senator McEachin.

15 SENATOR MCEACHIN: In response to that -- and
16 I'll be happy to share with you this information once I
17 get my hands on it -- but first of all, I take issue with
18 the fact that the lowest number that has ever been
19 approved by the DOJ is 55.5. That's number one.

20 Number two, Madam Chair, what I would suggest to
21 the Committee is that the comments that my good friend has
22 just made about the Voting Rights Act has sort of turned
23 the matter on its head. The purpose of the Voting Rights
24 Act is not -- and I repeat not -- to elect African
25 Americans. The purpose of the Voting Rights Act is to

1 give African Americans the opportunity to elect a
2 candidate of their choice. The fact that the Senator from
3 Georgia that you referenced lost the election simply means
4 that that was not the candidate of their choice. That
5 does not mean that the number 50.1 percent, or whatever
6 the number was that you cited, was too low.

7 I would also suggest that you look at recent
8 Virginia history and understand. Congressman Scott, when
9 he was first elected to the General Assembly, was elected
10 from a majority white district. I would also submit to
11 you that, as I understand it -- if I'm wrong, someone
12 please correct me -- that an African American mayor was
13 elected in Portsmouth, elected in Newport News, and
14 elected in Hampton, none of which have majority African
15 American populations, and yet all were successfully
16 elected mayor of their cities.

17 So what I would suggest to you is that the magic
18 number that you're throwing out -- or that you're
19 suggesting, pardon me -- is, in fact, not what is
20 required. What is required is that districts allow
21 African Americans to select a candidate of their choice.

22 SENATOR VOGEL: Madam chair.

23 MADAM CHAIR: Senator Vogel.

24 SENATOR VOGEL: I would just like to respond, if
25 I may, in addressing that question. I don't disagree with

1 my colleague's comments about what the underlying mission
2 is of Section 5. There is no question. It is to ensure
3 that that population, the minority population, has the
4 ability to elect a candidate of their choice. That is
5 absolutely true.

6 But it has been the position of the Department of
7 Justice, and I will speak to this very confidently, that
8 55.0 is the percentage that they believe is what is
9 qualified, and that has been, at least in the past to
10 date, their position regarding what it would take to be
11 able to elect a candidate of your choice, whomever that
12 might be.

13 Thank you, Madam Chair.

14 MADAM CHAIR: Thank you.

15 Senator Watkins, did you have more in your
16 presentation?

17 SENATOR WATKINS: Yes, I did.

18 MADAM CHAIR: All right. Go ahead.

19 SENATOR WATKINS: I think that it's important.
20 You know, this is an important statement of what we are
21 trying to do here. There's no question about that. We
22 have to comply with the law. But, also, this is
23 Virginia. These are our citizens that we're dealing with,
24 in terms of their representation. And it's all of the
25 citizens. It's not one community or another.

1 If I could, I'll just discuss briefly the
2 different regions of the state, and what we did, and the
3 rationale behind it.

4 Hampton roads. This plan recognizes that
5 Virginia Beach is Virginia's largest city. The population
6 exceeds two full Senate districts. Accordingly, there is
7 one district, District 2 -- and I will point out, if you
8 notice, we renumbered all of the districts. We tried to
9 use some rationale with starting in the east with one,
10 moving through Virginia and mostly the twenties and
11 thirties, and moving over into the southwest with the
12 thirties and up to the forties. They are different
13 numbers. So nobody gets wed to any number.

14 So District 2 is entirely within Virginia Beach,
15 and in District 1, 75 percent of the population is from
16 Virginia Beach. And this should allow Virginia Beach to
17 have two Senators whose primary, if not exclusive, focus
18 is on that city.

19 Planned districts, based primarily in Chesapeake,
20 District 3; Norfolk, District 5; Portsmouth, District 4,
21 allowing those cities to elect senators who represent
22 them. The peninsula contains one entire Section 5,
23 District 7, and the bulk of District 9. The 6th District
24 runs between Norfolk and the peninsula, with the
25 population between the localities relatively evenly split,

1 which should provide a healthy competition and a Senator
2 who will give both parts of Hampton Roads their strong
3 attention.

4 The slow population growth in Hampton Roads
5 necessitates a district being lost from this region.
6 Because slow population growth has impacted both the
7 peninsula and South Hampton Roads, it makes sense that
8 half of the loss should come from each side of the water.

9 All river, all water crossings in this area are
10 over bridges. They're not merely water connections.
11 District 1 uses the Chesapeake Bay Bridge Tunnel to
12 connect with Virginia Beach in North Hampton County.
13 District 6, using the Hampton Roads Bridge Tunnel,
14 connects between Norfolk and Hampton. And the 8th
15 District, using the James River Bridge, connects with
16 between the Isle of Wight and Newport News. In the 9th
17 District we use the Coleman Bridge to connect between York
18 and Gloucester Counties.

19 The Metro Richmond population growth over the
20 last decade has been comparable to that of the rest of the
21 state. Accordingly, Metro Richmond is entitled to
22 maintain the same representation that it currently has.
23 That is achieved in this plan. It keeps two Section 5
24 Districts in 10 and 11. It keeps a compact district in
25 Western Henrico, 15; and a compact District in

1 Chesterfield and Colonial Heights, 12.

2 The 16th and the 14th Districts are also
3 representing parts of Metro Richmond. In Northern
4 Virginia, the districts in Northern Virginia are drawn to
5 respect jurisdictional boundaries and communities of
6 interest. I understand Oakton and Senator Peterson don't
7 particularly jive. One district, 24, is entirely within
8 Arlington County, while Alexandria is kept whole in a
9 neighboring district, 23.

10 Whenever possible, within the half-percent
11 deviation, main thoroughfares are used to divide
12 districts, such as I95, the Capital Beltway, the Dulles
13 Toll Road, et cetera. Fairfax City, Falls Church,
14 Arlington and Alexandria have a population of 1.46
15 million, enough to justify 7.32 seats in the Senate of
16 Virginia.

17 There are seven districts that stay entirely
18 within these localities, and only one district that comes
19 into Fairfax from the south or west, 29. To pick up the
20 remaining population, expanding out into Loudoun, Prince
21 William, Manassas, Manassas Park, the localities of the
22 Northern Virginia planning district had the population of
23 2.23 million people, enough to justify 11.15 Senate
24 seats.

25 There are 11 districts entirely within this

1 region, with the 18th District coming into South Prince
2 William to pick up some of the remaining population.
3 Western and southwestern Virginia is drawn to keep
4 counties intact. The 40th district has no split
5 localities, while the neighboring 39th has only one split,
6 and that's in Pulaski County, to keep within the half-
7 percent deviation.

8 Currently, there are three rather large districts
9 in Western Virginia; the 21, 22, and the 25, and this map
10 makes two more important districts, the 35th, based around
11 Roanoke, and the 33rd, based around Charlottesville. Much
12 of the remaining population goes into the 34th District,
13 which is the more rural district on the outskirts of
14 Roanoke and Charlottesville. It was determined that two
15 compact and one larger district would be preferable.

16 I would point out that what we wind up with, when
17 all is said and done, is there are two pairings where
18 incumbents wind up in the same district. In both of those
19 pairings, it's a democrat and a republican, both of them.
20 There are no pairings of two republicans or two
21 democrats. It's a republican and a democrat, and there
22 are two open seats that are available.

23 And, Madam Chairman, that is the synopsis, if you
24 would. I apologize for it taking so long, but I think
25 that it clearly gives us a good opportunity to -- a good

1 plan.

2 MADAM CHAIR: This is a very important subject,
3 so thank you for giving us that explanation.

4 Senator Deeds.

5 SENATOR DEEDS: Madam chair.

6 Senator Watkins, the district that I represent,
7 Bob Gibson, who is now at the Sorensen Institute, once
8 called it a bat out of West Virginia. That was the
9 district you all drew, the 25th, ten years ago. It looks
10 like now the 34th district, which would be the one that
11 I'm in, would be a boomerang district; wouldn't you agree?

12 SENATOR WATKINS: I'm not very good at art.

13 SENATOR DEEDS: Yes, I can tell. Ink spots.

14 SENATOR WATKINS: But I think you're in there on
15 your own, and I think it's a democratic district.

16 SENATOR BARKER: Madam Chair.

17 MADAM CHAIR: Senator Barker.

18 SENATOR BARKER: Madam Chair, just a couple of
19 comments, because I think the discussion on the Voting
20 Rights Act is very significant.

21 My understanding is that there have been a number
22 of districts approved with less than 55 percent African
23 American, and, in fact, many of the districts we're
24 looking at right now are less than 55 percent African
25 American population, voting-age population, at this

1 particular time.

2 I think it's also important to point out that we
3 do have a number of individuals, African Americans, who
4 have been elected in districts that are far lower than
5 fifty percent, than 55 percent African American voting-age
6 population. Just in Northern Virginia alone I can think
7 of many, many officials in districts that are less than 25
8 percent, and many incidents of less than ten percent who
9 have been elected, including the Mayor of the City of
10 Alexandria, two members of the House of Delegates, former
11 County Board Chair, the Sheriff of Prince William County,
12 School Board members at large, within Fairfax County
13 School Board members, members from individual districts.

14 So I think it's important to ensure that African
15 Americans have a chance to have influence in districts
16 beyond just the Voting Rights Act Districts, and I think
17 they certainly are exercising that to a substantial degree
18 now.

19 I think it is important that we not pack African
20 American voters into a very, very limited number of
21 districts, or into a majority in any way that to some
22 extent disenfranchises their opportunity to have influence
23 in other districts.

24 SENATOR VOGEL: Madam Chair.

25 MADAM CHAIR: Yes, Senator Vogel.

1 SENATOR VOGEL: I wonder if you would indulge me
2 for a moment just to speak more broadly to Senator
3 Watkins' proposal.

4 MADAM CHAIR: Of course.

5 SENATOR VOGEL: I would just like to say that, in
6 speaking broadly as an exercise in comparison, I would
7 like to say that, in deference to the fact that Senator
8 Watkins has done this four times, he brings a perspective
9 to this that some of us don't have.

10 But I will say that he undertook this exercise --
11 and I was happy to participate in that process -- to,
12 again, hearkening back to my earlier comments, really test
13 to see how good a map can you draw, how low can you keep
14 those deviations respecting One Person/One Vote. I would
15 be remiss if I didn't just take a moment to talk about the
16 deviation issue.

17 The deviation issue, as evaluated, is less
18 about -- and I know we had this discussion, and I know
19 Senator Puckett talked about this, and he was right to be
20 very concerned about this notion of not breaking up towns,
21 not splitting local jurisdictions. And, certainly I'm
22 hearing a lot from some of my local jurisdictions about
23 this. At the end of the day, the notion is that that is
24 our underlying mission, is to try to keep those
25 communities of interest, respecting local boundaries,

1 together.

2 And that deviation discussion -- is five percent
3 appropriate, is two percent, does that have any bearing on
4 that? One of the things we attempted to do was to see how
5 low we could do it. We got it to half a percent, which I
6 thought was fairly extraordinary, keeping more of these
7 communities together. That, I thought, was pretty
8 important.

9 But more than the percentage deviation, is there
10 a pattern to that deviation, because when someone wants to
11 come in and challenge you, they're not challenging you on
12 your percentage nearly as much as they're challenging you
13 on is there a pattern.

14 As we tried to do this around the state and keep
15 that deviation at half a percent, we were very mindful,
16 again, looking at the legal parameters. If we're trying
17 to get through a plan that has the greatest likelihood of
18 being precleared -- because I think all of us sitting
19 here, no matter where we are in this process, would have
20 to say that the underlying goal of this process is to pass
21 out a map that will preclear, that will pass legal muster,
22 whether it's with the Department of Justice, or, if it's
23 in litigation, a Court will say is okay, legally okay,
24 indefensible. Because all of us would like to have that
25 certainty come November, what district we may or may not

1 be running in.

2 So, that said, this going back to the deviation
3 issue, we were careful to be considerate of that and not
4 create any situation where there's a pattern. By
5 contrast, in the map that has been introduced, I do
6 believe that there's a serious issue. And I know that
7 Senator Watkins spoke to that briefly. That notion that
8 there is a pattern to deviation, to the extent that those
9 communities that are growing more slowly are
10 underpopulated within that deviation, and the communities
11 that are growing more quickly are overpopulated somewhat.

12 I think that that does pose a concern, somewhat.
13 Again, getting to the place where we think we can preclear
14 this plan, I think it's useful to be mindful of that
15 consideration and mindful of that future objection,
16 because if you are looking at this in the context of One
17 Person/One Vote, that is something that's, after all, the
18 whole mission of redistricting.

19 The notion that you have poor Mark Herring
20 sitting in the 33rd District on two full Senate seats.
21 That is both an undue burden on him as a legislator, and,
22 two, an issue for the people he represents.

23 So where we don't want to be is in a position
24 where we're starting right out of the box, and districts
25 like this that Senator Herring represents, with those

1 deviations that already start with them being
2 overpopulated. So I thought that was important to
3 mention, just in terms of contrast and what your plan
4 did.

5 I would like to go back and just one more time
6 mention this whole notion of retrogression. I did not
7 mean to get us off track there in the discussion of
8 Section 5. I only mention that because I think it was
9 raised, and because it is, again, key. I think it goes to
10 the very core of what we're trying to do when we get out
11 of the legislative session. I don't think any of us want
12 to come back here in June and July and August, and then
13 potentially run again next year, because we weren't
14 careful enough about some minor tweaking to put forward a
15 plan that we believe will pass legal muster.

16 And Senator Barker -- the Senator from Prince
17 William, I apologize. I'm supposed to address you that
18 way -- was correct in commenting about the elections that
19 you referenced. That is absolutely true. People have
20 been elected, even though they didn't have a majority in
21 their district. But that isn't -- and I think I perhaps
22 was not as clear as I should have been -- that isn't the
23 underlying goal of what Section 5 preclearance, addressing
24 retrogression, goes to.

25 The notion is that you're looking not to

1 retrogress the benchmark. That is where we are. And that
2 is why I believe, and I have not discussed this with my
3 colleagues in the House, this whole notion of what
4 benchmark they used. But they clearly believed that was
5 the law, because if you look at the House Plan, they were
6 careful not to retrogress below 55 percent, which is the
7 benchmark in the Commonwealth of Virginia.

8 And I think that is, under Section 5, it
9 prohibits -- and let me just be clear about what Section 5
10 does -- it prohibits retrogression. It's not out there
11 talking about any sort of arbitrary standards. But, more
12 importantly, it is talking about retrogressing minority
13 districts that change the voting practice or procedure
14 that would leave minorities in a position worse off in the
15 new plan than they were under the old benchmark plan.

16 That's nearly all that was about, keeping that 55
17 percent. And I assume my colleagues in the House
18 undertook it for the exact same reason; it is a benchmark
19 question. And in the Commonwealth of Virginia right now
20 in the Senate, 55 percent is the benchmark.

21 I will tell you that the most recent Virginia
22 redistricting rejection from DOJ was in 2002 -- and I went
23 back and looked at this just for this issue -- where
24 Cumberland County dropped the black total population, or
25 BVAP, Voting-Age Population of the district from 55.9

1 percent to 55.3 to percent. Now, clearly, that's above
2 55. And they also dropped -- sorry, 55.9 to 55.3.

3 DOJ noted that, because the alternatives could be
4 drawn in a way that didn't drop it, that would have, in
5 fact, increased it, that the drop demonstrated an intent
6 to retrogress, and it didn't preclear that proposal.
7 That's pretty stark.

8 So I just thought I would mentioned this as an
9 intent to be clear about this as an issue of benchmarking,
10 and that was the whole notion of the 55 percent.

11 Thank you.

12 MADAM CHAIR: Yes, thank you, Senator Vogel. I
13 couldn't agree with you more that we are all very eager to
14 have our plan precleared, and I want to assure you that we
15 meet all the legal requirements of both Federal and State
16 law, as well as the Constitutions.

17 SENATOR WATKINS: Madam Chair, that's my plan.

18 MADAM CHAIR: Okay. Were there any other
19 questions from members? Okay. Would anyone in the public
20 like to address this amendment in the nature of a
21 substitute or Senator Watkins?

22 Okay. Well, then we have on the floor a motion
23 to adopt Senator Watkins' amendment in the nature of a
24 substitute.

25 SENATOR MCEACHIN: Madam Chair.

1 enormous amount of dissatisfaction across all these
2 cities. These cities have different interests, different
3 economies, different conditions, as many cities across the
4 Commonwealth do. I don't think that has been considered.

5 We've eliminated a seat. We've taken one, the
6 remaining Senate seat is in Virginia Beach, and 65 percent
7 of the voters from Virginia Beach will be represented by
8 that seat, and, yet, 35 percent from Chesapeake, a city of
9 250 thousand.

10 So I'm not going to try to ramble on and on here,
11 just to say that I do think also we have to work, and we
12 must try to work, particularly given this two-percent
13 variance, which we just committee-approved. I didn't vote
14 for it, but to do a better job of putting cities and towns
15 of interest and the people that are represented -- this is
16 about people who are represented -- into a much more
17 orderly, systematic way and make improvements.

18 I agree with the Senator from Bath County, that
19 if we made mistakes ten years ago, we ought to try to
20 improve upon them. I will guarantee we will be back here
21 ten years from now -- maybe not us, but someone will be
22 back here ten years from now, saying what were they
23 thinking.

24 Thank you.

25 MADAM CHAIR: Thank you. Did anyone wish to

1 speak? If not, before us now is a motion to report an
2 amendment in the nature of a substitute for House Bill
3 5001, as amended.

4 The Clerk will call the role.

5 CLERK: Senator Martin.

6 SENATOR MARTIN: No.

7 CLERK: Senator Deeds.

8 SENATOR DEEDS: Yes.

9 CLERK: Senator Whipple.

10 SENATOR WHIPPLE: Yes.

11 CLERK: Senator Obenshain.

12 SENATOR OBENSHAIN: No.

13 CLERK: Senator Puckett.

14 SENATOR PUCKETT: Yes.

15 CLERK: Senator Edwards.

16 SENATOR EDWARDS: Aye.

17 CLERK: Senator Blevins.

18 SENATOR BLEVINS: No.

19 CLERK: Senator McEachin.

20 SENATOR MCEACHIN: Aye.

21 CLERK: Senator Peterson.

22 SENATOR PETERSON: Aye.

23 CLERK: Senator Smith.

24 SENATOR SMITH: No.

25 CLERK: Senator Barker.

1 SENATOR BARKER: Yes.

2 CLERK: Senator Northam.

3 SENATOR NORTHAM: Yes.

4 CLERK: Senator Vogel.

5 SENATOR VOGEL: No.

6 CLERK: Senator McWaters.

7 SENATOR MCWATERS: No.

8 CLERK: Senator Howell.

9 MADAM CHAIR: Yes.

10 CLERK: Nine ayes, six nays.

11 MADAM CHAIR: The bill is reported, nine ayes,
12 six nays. There being no more business to come before the
13 Committee, the Committee will rise.

14

15 NOTE: At this time the hearing was adjourned.

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1 CERTIFICATE OF COURT REPORTER

2

3 I, Kellie Milner, hereby certify that I was
4 the court reporter in the Privileges and Elections Hearing
5 for the Senate on the 7th day of April, 2011, at the time
6 of the hearing herein.

7 I further certify that the foregoing transcript
8 is a true and accurate record of the incidents of the
9 hearing herein, to the best of my ability.

10 Given under my hand this 8th day of May, 2011.

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14 Kellie Milner, Court Reporter

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Exhibit 52

Exhibit 52

Report of John B. Morgan Regarding Plaintiffs' Alternative Plan and the Enacted Plan

Page v. State Board of Elections

Background Information

My name is John B. Morgan. I have been retained by the defendants to offer an expert opinion regarding Plaintiffs' Alternative Plan and the Enacted Plan. I hold a B.A. in History from the University of Chicago. As detailed in my CV, attached as Exhibit A, I have extensive experience in the field of redistricting, working on redistricting plans in the redistricting efforts following the 1990 Census, the 2000 Census, and the 2010 Census. I have testified as an expert witness in demographics and redistricting. I am being compensated at a rate of \$250 per hour for my services in this case.

In preparing this analysis, I considered the following: the legal briefs submitted to the court, reports by Dr. Michael McDonald and Dr. Thomas Brunell, court cases mentioned in the briefs and reports, relevant portions of the Sec. 5 preclearance submissions to the Department of Justice, various maps and datasets from the current and previous congressional districts, the Plaintiffs' Alternative Plan maps and data, the 2010 redistricting PL94-171 data and Census geography data from the Census Bureau, political and redistricting data from the Department of Legislative Services and the Virginia State Board of Elections, and the Maptitude for Redistricting geographic information system (GIS) software and manuals from Caliper Corporation.

The redistricting geographic information system (GIS) software package used for this analysis is Maptitude for Redistricting from Caliper Corporation. The redistricting software was loaded with the census PL94-171 data from the Census and the Census geography as well as available redistricting and political data from Department of Legislative Services and the Virginia State Board of Elections. The full suite of census geography was available, including Census Places, Voting Districts, water bodies, and

roads, as well as Census Blocks which are the lowest level of geography for which the Census Bureau reports population counts.

The Department of Legislative Services provided political data for 2008 and 2009 for use during the General Assembly redistricting process. I prepared reports and analysis based on this data for the Benchmark, Enacted and Alternative Plans. In addition, I was provided data for the 2012 presidential election by counsel and asked to analyze this data for the Benchmark, Enacted, and Alternative Plans.

Table 1. Benchmark 2001 Congressional Districts Election Data

CD	Current Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08		Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	65%	35%	62%	38%	63%	37%	53%	47%	1%	38%	61%	1%		52%	47%	1%
2	R	62%	38%	56%	44%	60%	40%	50%	50%	1%	34%	64%	1%		48%	50%	1%
3	D	34%	66%	33%	67%	35%	65%	25%	75%	1%	18%	81%	1%		23%	75%	1%
4	R	61%	39%	59%	41%	61%	39%	50%	49%	1%	37%	61%	1%		49%	50%	1%
5	R	61%	39%	60%	40%	62%	38%	52%	47%	1%	35%	64%	1%		52%	46%	2%
6	R	67%	33%	66%	34%	67%	33%	58%	41%	1%	41%	58%	1%		59%	40%	2%
7	R	66%	34%	63%	37%	65%	35%	54%	45%	1%	39%	59%	1%		54%	44%	1%
8	D	39%	61%	37%	63%	36%	64%	32%	67%	1%	25%	73%	1%		30%	68%	1%
9	R	67%	33%	66%	34%	66%	34%	59%	39%	1%	36%	63%	1%		64%	34%	2%
10	R	61%	39%	58%	42%	58%	42%	48%	51%	1%	38%	61%	1%		48%	51%	1%
11	D	55%	45%	52%	48%	52%	48%	44%	56%	1%	35%	64%	1%		42%	57%	1%

Table 2. Enacted Congressional Districts Election Data

CD	Current Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08		Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	66%	34%	63%	37%	64%	36%	53%	46%	1%	39%	60%	1%		53%	46%	1%
2	R	62%	38%	57%	43%	60%	40%	50%	49%	1%	35%	64%	1%		49%	50%	1%
3	D	31%	69%	29%	71%	31%	69%	22%	78%	1%	16%	83%	1%		20%	79%	1%
4	R	63%	37%	60%	40%	62%	38%	51%	48%	1%	39%	60%	1%		50%	49%	1%
5	R	62%	38%	61%	39%	62%	38%	52%	47%	1%	36%	63%	1%		53%	46%	2%
6	R	67%	33%	67%	33%	68%	32%	58%	41%	1%	42%	57%	1%		59%	39%	2%
7	R	68%	32%	65%	35%	67%	33%	56%	43%	1%	41%	58%	1%		57%	42%	1%
8	D	40%	60%	38%	62%	38%	62%	33%	66%	1%	26%	73%	1%		31%	68%	1%
9	R	66%	34%	66%	34%	66%	34%	59%	40%	1%	36%	63%	1%		63%	35%	2%
10	R	63%	37%	60%	40%	60%	40%	50%	50%	1%	39%	60%	1%		50%	49%	1%
11	D	50%	50%	47%	53%	47%	53%	38%	61%	1%	30%	68%	1%		36%	62%	1%

Table 3. Plaintiffs' Alternative Congressional Districts Election Data

C D	Curren t Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08		Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	66%	34%	63%	37%	64%	36%	53%	46%	1%	39%	60%	1%		53%	46%	1%
2	R	57%	43%	52%	48%	55%	45%	44%	55%	1%	31%	68%	1%		44%	55%	1%
3	D	38%	62%	36%	64%	37%	63%	28%	71%	1%	20%	78%	1%		25%	73%	1%
4	R	63%	37%	60%	40%	62%	38%	51%	48%	1%	39%	60%	1%		50%	49%	1%
5	R	62%	38%	61%	39%	62%	38%	52%	47%	1%	36%	63%	1%		53%	46%	2%
6	R	67%	33%	67%	33%	68%	32%	58%	41%	1%	42%	57%	1%		59%	39%	2%
7	R	68%	32%	65%	35%	67%	33%	56%	43%	1%	41%	58%	1%		57%	42%	1%
8	D	40%	60%	38%	62%	38%	62%	33%	66%	1%	26%	73%	1%		31%	68%	1%
9	R	66%	34%	66%	34%	66%	34%	59%	40%	1%	36%	63%	1%		63%	35%	2%
10	R	63%	37%	60%	40%	60%	40%	50%	50%	1%	39%	60%	1%		50%	49%	1%
11	D	50%	50%	47%	53%	47%	53%	38%	61%	1%	30%	68%	1%		36%	62%	1%

The Enacted Plan preserves between 71% and 96% of the cores of the Benchmark districts, and preserves 83% or more of the cores of 9 of the 11 districts, including District 3. The Enacted Plan preserves 85% of the core of District 2 and 83% of the core of District 3.

The Alternative Plan performs significantly worse than the Enacted Plan on this criterion. The Alternative Plan preserves only 69.2% of the core of District 3, down from 83% in the Enacted Plan. In other words, Alternative District 3 would be the *worst performing* district in terms of preservation of cores in either the Enacted or the Alternative Plan. Dr. McDonald offers no explanation as to why the only majority-minority district in Virginia should be entitled to less continuity and respect for incumbency protection than every other district.

Protection of Incumbents

The Senate Criteria included the factor of “incumbency considerations.” Senate Criteria V. This factor encompasses not just preserving the cores of districts but also strengthening incumbents politically. As explained, the Enacted Plan respects this factor significantly, while the Alternative Plan undermines it, particularly in District 2, where Congressman Rigell would be gravely weakened in his re-election prospects.

Compliance with the Voting Rights Act

The Senate Criteria treated compliance with the Voting Rights Act, “including compliance with protections against unwarranted retrogression or dilution of racial or ethnic minority voting strength,” as the highest priority for the Enacted Plan after compliance with the Constitutional equal-population requirement. Senate Criteria II. I understand that a redistricting plan complies with Section 5 only if it does not diminish the ability of minority voters to elect their candidates of choice.

The Enacted Plan increased District 3’s Black VAP on both of Dr. McDonalds’ preferred measures

3.2% (exclusive) and 3.3% (inclusive). 2/21/14 McDonald, page 8. The Enacted Plan thus did not diminish the ability of black voters to elect their candidates of choice. The Enacted Plan received preclearance from the Department of Justice.

In 2011, Virginia was one of the first states to complete its statewide legislative redistricting and seek Section 5 preclearance from the Department of Justice. The General Assembly passed a redistricting plan for the House of Delegates which required preclearance for the 2011 elections. The benchmark House of Delegates plan had 12 districts in which African-Americans formed a majority of the total and voting age populations. Many of those districts were located in the geography covered by Congressional District 3. During the redistricting process, the House of Delegates considered a number of proposed plans that preserved the 12 majority-black districts. Some of these alternative plans had Black VAP below 55%. House of Delegates Section 5 Submission, Statement of Minority Impact, page 5.

But the House of Delegates plan that the General Assembly enacted had a Black VAP of above 55% in all 12 majority-black districts – including the districts within Congressional District 3. This required increasing the Black VAP in some of the 12 majority-black benchmark districts from the Black VAP level at the time of the 2010 census. Eight of the 12 members of the House of Delegates Black Caucus voted in favor of the Enacted House of Delegates plan. House of Delegates Section 5 Submission, Statement of Minority Impact, page 5.

Thus, the General Assembly enacted, with strong support of bipartisan and black legislators, a House of Delegates redistricting plan with a 55% Black VAP as the floor for black-majority districts subject to Justice Department preclearance under Section 5, including districts within the geography covered by Congressional District 3. The General Assembly therefore had ample reason to believe that legislators of both parties, including black legislators, viewed the 55% black VAP for the House of Delegates districts as appropriate to obtain Section 5 preclearance, even if it meant raising the Black

VAP above the levels in the benchmark plan. The General Assembly acted in accordance with that view for the congressional districts and adopted the Enacted Plan with the District 3 Black VAP at 56.3%

The Alternative Plan, by contrast, decreases District 3's Black VAP by 2.9% and drops it to a razor-thin majority of 50.2% (exclusive) and 51% (inclusive). These levels are below the 55% that the General Assembly found appropriate to comply with Section 5 for House Districts.

Dr. McDonald states that "a racial bloc voting analysis" is required to prove what Black VAP is necessary to comply the Voting Rights Act. 1/20/14 McDonald, page 11. Dr. McDonald provides no such analysis of the Alternative Plan. Thus Dr. McDonald cannot – and does not – opine that the Alternative Plan could or would have received preclearance under Section 5.

Therefore the Alternative Plan would have presented obstacles to obtaining Section 5 preclearance that the Enacted Plan did not present. The Alternative Plan drops District 3's Black VAP well below the 55% that the General Assembly believed was appropriate to obtain preclearance for House Districts and decreases District 3's Black VAP to a razor-thin majority below the Benchmark Black VAP level. Had the Alternative Plan been before it, the General Assembly had ample reason to prefer the Enacted Plan, which increased District 3's Black VAP above 55% and faced none of these hurdles to achieving Section 5 preclearance.

The Alternative Plan Does Not Bring About Significantly Greater Racial Balance Than the Enacted Plan

I have been asked to analyze whether the Alternative plan brings about "significantly greater racial balance" than the Enacted Plan. As I understand it, the purpose of this requirement is to cure the alleged racial gerrymander and turn the gerrymandered district into one that is not racially identifiable. The Alternative Plan fails that purpose because it preserves District 3 as a racially identifiable majority-

black district on both of Dr. McDonald's Black VAP measurements. The Alternative Plan District 3 replaces a black-majority district with a black-majority district and in doing so would not seem to cure the alleged racial predominance that Dr. McDonald criticizes in the Enacted Plan, including the changes to the Benchmark District 3 that the Alternative Plan replicates.

The Enacted Plan is not a Racial Gerrymander

Based on my review and analysis of the available data discussed throughout this report, I also conclude that the Enacted Plan is not a racial gerrymander. In my opinion, politics rather than race predominated and the Enacted Plan is consistent with traditional redistricting principles, including the criteria identified by the Virginia Senate and followed by the General Assembly.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 14, 2014 in Fairfax, Virginia.

John B. Morgan

Exhibit 68

Exhibit 68

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GOLDEN BETHUNE-HILL, et al. :
vs. : Civil Action No.
VIRGINIA STATE BOARD OF : 3:14CV852
ELECTIONS, et al. : June 4, 2015

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Kevin J. Hamilton, Esquire
Perkins Coie, LLP
1201 Third Avenue
Suite 4800
Seattle, Washington 98101

Bruce V. Spiva, Esquire
Aria C. Branch, Esquire
Perkins Coie, LLP
700 13th Street, NW
Suite 600
Washington, D.C. 20005
Counsel for the plaintiff

Peppy Peterson, RPR
Official Court Reporter
United States District Court

1 for the hearing of motions *in limine*?

2 MR. HAMILTON: I don't believe so, Your Honor.

3 This is Mr. Hamilton. I don't believe so, Your Honor.

4 JUDGE PAYNE: We probably need to set that date,
5 so we'll see how we proceed. All right, it might be
6 helpful to discuss item five, the theories of the case for
7 each side, to kind of help get us oriented and thinking in
8 the right direction, and we may end up, each of us, of the
9 judges may have questions as you go along, so anybody,
10 just feel free to interject at such time as you want to.
11 So start with the plaintiff.

12 MR. HAMILTON: All right. Thank you. Your
13 Honor, from the plaintiff's perspective, this is a really
14 straightforward case, and our case theory is fairly
15 simple. The equal protection clause of the 14th Amendment
16 forbids race-based redistricting absent a compelling state
17 interest, and even then, even if the state does identify a
18 compelling state interest, it can use race only when it's
19 narrowly tailored to meet the state interest. That's the
20 law.

21 Our theory of the case is that in 2011, the
22 Virginia General Assembly used race as the predominate
23 factor in drawing the 12 house districts that are at issue
24 in this case; B, had no compelling state interest for
25 doing so; and C, in any event, failed to narrowly tailor

1 those districts to meet whatever state interest defendants
2 or intervenors might identify.

3 The case, we think, is substantially easier and
4 clearer than the recent Page decision which involved the
5 Third Congressional District in Virginia last year before
6 this Court, and that's for two reasons. First, to the
7 extent that there was any doubt about the controlling
8 legal standards for such a claim, they have been
9 emphatically laid to rest by this Court's decision in the
10 Page case last year and by the Supreme Court's decision in
11 the recently decided case of *Alabama Legislative Black*
12 *Caucus v. Alabama*.

13 There, the Supreme Court made it clear that a
14 legislature may not utilize, and I quote, mechanical
15 racial targets, close quote, in a misguided effort to
16 comply with the Voting Rights Act non-retrogression
17 standard. That aligns precisely with this Court's ruling
18 in Page to the same effect.

19 So that's the first reason, the law is
20 substantially --

21 JUDGE PAYNE: Is it your view that there was some
22 mechanical formula or figure used? Is that what you are
23 going to seek to prove?

24 MR. HAMILTON: Exactly, Your Honor, and that's
25 the second reason why this is an easier and clearer case

1 than Page. The record before the Court, the delegates,
2 Delegate McClellan, Delegate Dance, and Delegate Armstrong
3 will testify that they were aware and they were told of a
4 55 percent black voting age population threshold or floor
5 that was used in drawing all of the 12 majority/minority
6 districts, and you'll hear during the course of the trial
7 that black voting age population figure repeated over and
8 over again in testimony and in the documents, 55 percent
9 BVAP, B-V-A-P, is how, as you know, Your Honor, is how
10 it's referred to.

11 In addition, the chief map drawer, Delegate
12 Jones, who the intervenors intend to call, himself
13 repeatedly and emphatically articulated that 55 percent
14 BVAP floor in the floor debates before the House of
15 Delegates and in email communications that have been
16 produced during the course of discovery.

17 There are transcripts of several floor debates
18 and a committee hearing that we'll be presenting and
19 putting into evidence in which the delegate, Delegate
20 Jones, is responding to questions on the floor of the
21 House about how it was drawn. The evidence will show that
22 when requests were made to fix a precinct split or a
23 voting tabulation district split, it was rejected. Even
24 though the black voting age population resulting from
25 fixing that split would have been 54.8 percent, it was

1 rejected, and the reason given was because it didn't meet
2 the 55 percent target, and that's a quote from the
3 document, and we'll be presenting that in evidence.

4 Two-tenths of a percent was too much, and that
5 demonstrates how the black voting population threshold or
6 floor was used to trump all other considerations.

7 So we think the case is pretty straightforward.
8 The legal standards have been reiterated and clarified,
9 and the record is even clearer and stronger than the
10 record that was before the Court last year in Page.

11 JUDGE PAYNE: All right. Judge Lee or Judge
12 Keenan, do you all have any questions for the plaintiff on
13 that topic?

14 JUDGE LEE: I don't have any questions.

15 JUDGE KEENAN: I only had one question with
16 regard to the absence of a compelling state interest and
17 in any event no narrow tailoring. Does the plaintiff
18 intend to present evidence in its case in chief, or is
19 that going to be saved for rebuttal?

20 MR. HAMILTON: The expert witness -- I mean the
21 answer is, Your Honor, I believe we'll be presenting
22 evidence on that with respect to -- in our case in chief,
23 and this is how it works, or this is how it will be
24 presented, I think.

25 In these cases, often the explanation is -- I

1 think the explanation of the state here for using the
2 55 percent black voting age population is we needed to
3 prevent retrogression, meaning we needed to prevent any
4 retrogression in the ability of the minority community to
5 elect a candidate of their choice, to have opportunity to
6 elect the candidate of their choice, and typically, the
7 way that a state would do that in order to comply with the
8 Voting Rights Act is to conduct a racial block voting
9 analysis in order to determine what level of BVAP, of
10 black voting age population, do we need to have in this
11 district to ensure that the minority population has the
12 opportunity to elect its candidate of choice.

13 And the problem here is that the State did not do
14 a racial block voting analysis, and, of course, that's
15 obvious because they used a single number for 12 districts
16 across the board, and even the defendants -- I'm sorry,
17 the intervenor's own expert will say that he'd be shocked,
18 he'd be surprised if the level of white crossover voting
19 would be the same in all 12 districts such that black BVAP
20 were -- exactly the same for all 12 would have been
21 required.

22 So that's part of our case in chief of
23 identifying -- sort of blowing up -- you can't -- the
24 State cannot point to compliance with Section 5 of the
25 Voting Rights Act as their defense using race.

1 And the other -- the only other explanation
2 they'll come forward with is it was all about politics,
3 and that is not a defense to using race in violation of
4 the 14th Amendment. That is not a legitimate -- that may
5 be a legitimate purpose in the course of redistricting,
6 but it's not a compelling state interest, and the problem
7 here is that the map drawers used race, not politics.

8 It's a 55 percent black voting age population
9 floor that was used. They didn't use, you know, some
10 measure of democratic or republican political performance.
11 If they did, that would have been permissible. That's
12 legal to do, but the 55 percent rule is not 55 percent
13 democratic performance or republican performance. It's 55
14 percent black voting age population.

15 It's sorting people by the color of their skin.
16 It's forbidden by the 14th Amendment absent a compelling
17 state interest, and part of our case in chief through Dr.
18 Dr. Ansolabehere will be to explain that there was no
19 racially polarized voting analysis done here, and this was
20 not done in an effort to comply with the Voting Rights
21 Act.

22 JUDGE PAYNE: Does that answer your question,
23 Judge Keenan?

24 JUDGE KEENAN: Yes, thank you.

25 JUDGE PAYNE: Do you propose to present, Mr.

1 Hamilton, as a part of your case, an alternative map to
2 show what it would have -- or should have looked like if
3 the proper procedures had been followed?

4 MR. HAMILTON: Your Honor, it's Mr. Hamilton for
5 the plaintiffs. We have not -- we have not prepared our
6 own map for use -- or maps from all 12 legislative
7 districts. We do intend to offer maps that were before
8 the House of Delegates at the time.

9 JUDGE PAYNE: The things that they had available
10 to them to consider.

11 MR. HAMILTON: Correct.

12 JUDGE PAYNE: But you're not offering your own
13 map to show what properly should have been done.

14 MR. HAMILTON: Correct, Your Honor, we're not.

15 JUDGE PAYNE: As I understand what you said in
16 discussing your case, you do not intend to take on each
17 district individually, because what you are doing is
18 striking at the one basic point, and that is the
19 application of the 55 percent BVAP figure as a floor, and
20 that permeated and controlled all of the drawing -- the
21 drawing of all the districts that are at issue, and you're
22 not really going to be attacking them district by
23 district; is that correct?

24 MR. HAMILTON: Not really, Your Honor. We will
25 be attacking them individually through the use of Dr.

1 Ansolabe here who goes through each individual one. I
2 think the Court in *Alabama* made it clear, and perhaps
3 that's the genesis of the Court's question, made it clear
4 that you do -- it is a district-specific analysis that's
5 required, and that is exactly what Dr. Ansolabe here will
6 be doing.

7 You are absolutely correct, Your Honor, that the
8 same 55 percent rule is applied to all 12, and that, of
9 course, is a fact that's relevant to each of the 12
10 districts, but in addition, Dr. Ansolabe here is looking at
11 compactness of each of the 12 districts, and he's doing an
12 analysis of the VTD which is the -- or precincts that were
13 moved into and out of each one of the 12 districts in
14 order to analyze both race and politics to answer the
15 question, what's the more powerful explanation for which
16 precincts were included and which precincts were
17 excluded -- is it race or is it politics -- and the
18 conclusion that he comes to is that, by far, race is a far
19 more powerful explanation or predictor for explaining --
20 in other words, you can have similarly situated
21 politically performing districts, and if one is more
22 heavily black than the other, then the black district is
23 more likely included rather than excluded.

24 JUDGE PAYNE: That's really a rebuttal point,
25 though. Once they raise the issue of political reasons,

1 if they do that, then you put on your testimony about
2 that's not correct; isn't that how you go about it?

3 MR. HAMILTON: I think it's an inherent part of
4 our case in chief, Your Honor, that we have to demonstrate
5 that race was the predominant factor in drawing these
6 districts, and one of the pieces of evidence that goes to
7 that point is how those precincts were selected. I mean,
8 they were selected because of race. I mean, I think it's
9 necessarily race, not politics --

10 JUDGE PAYNE: But as to each of the 12 districts,
11 you are saying that the 55 percent is the controlling
12 factor, and the other factors that you are going to
13 discuss through the doctor, whose name has slipped my mind
14 now --

15 MR. HAMILTON: Ansolabehere.

16 JUDGE PAYNE: -- is really for the purpose of
17 explaining why race is the predominant question, issue.

18 MR. HAMILTON: That's right. That's exactly
19 right.

20 JUDGE PAYNE: Okay. How about the defendants?

21 MR. TROY: Your Honor, Tony Troy. We believe
22 that the plan is defensible. I was going to emphasize,
23 but the discussion just verified that each and every
24 district has to be looked at and analyzed, and the
25 defendant intervenors are, I know, going to be presenting

1 evidence on each of those instances.

2 JUDGE PAYNE: All right. Mr. Braden.

3 MR. BRADEN: Your Honor, this case, from our
4 point of view, is very much simply a replay of *Wilkins v.*
5 *West* from ten years ago. The same attacks were made on
6 the Virginia redistricting plan following the last census.

7 This plan is, in many ways, like that plan except
8 the plan that was adopted following the last census is a
9 plan that is -- the House delegate is more compact. It
10 doesn't have the contiguousness issues that were present
11 in the other plan, and it had much broader political
12 support.

13 The *Shaw* claim that's being made by the
14 plaintiffs in this case requires that they show that race
15 predominates over all other traditional race-neutral
16 principles for redistricting, that the plan itself is
17 unexplainable other than based upon race.

18 We're going to show the Court the various
19 districts that had been rejected in prior *Shaw*-style
20 litigation, and you'll see that they all involve plans
21 which have districts that, frankly, don't look like
22 districts. They don't bear any resemblance to any notion
23 of geography.

24 Our intention is to go through district by
25 district and explain why the districts look the way they

1 are. They are more compact, and, in fact, they are
2 compact as defined under the Virginia constitution. The
3 Virginia constitution, unlike most states, has a very
4 specific provision about districts being compact and
5 contiguous.

6 The plan adopted by the legislature here clearly
7 meets those requirements as articulated in *Wilkins v.*
8 *West*. It's a more compact plan, and the contiguous issues
9 that were raised in that litigation, frankly, were solved
10 in this plan.

11 So this is a plan under Virginia law that is
12 compact. That's the basic principle we're talking about
13 here, that in all the *Shaw* cases is the beginning of the
14 process of an indication of this plan is not explainable
15 under traditional redistricting criteria.

16 So it's our intention simply to go district by
17 district and explain why the lines are drawn the way they
18 are. The long and short of it is, yeah, is race
19 considered? Absolutely race is considered, but race does
20 not get you to strict scrutiny unless you have ignored the
21 other traditional redistricting criteria and race is
22 predominant.

23 If race alone, if the consideration of race alone
24 resulted in strict scrutiny, then every single legislative
25 plan in the United States, with the exception of Vermont

1 and Maine, would be subject to strict scrutiny.

2 If you look at *Cromartie*, you look at the whole
3 line of *Shaw* cases which control here, the first step is
4 the plaintiffs have to show that race predominated over
5 all other, all other criteria. It cannot prove that. We
6 will walk through -- and that's the reason why we have the
7 architect of the plan.

8 The process of drawing a legislative plan is
9 complex, complex both legally and politically. So, you
10 know, it's going to be -- we're talking about Delegate
11 Jones being on the stand for a lengthy period of time so
12 you can walk through the process of the line-drawing
13 process, why the districts look the way they do.

14 I hear that they're going to call Delegate
15 Armstrong, the minority leader, and one of the reasons why
16 the plan was drawn the way it was is now Delegate Jones is
17 no longer a member of the legislature. He lost his seat
18 because of the way the lines were drawn. He was a
19 minority leader.

20 So what we're talking about here is a process of
21 walking through for the Court why this plan is faithful to
22 a series of criteria which were adopted by the
23 legislature, very specific criteria adopted by the
24 legislature and very traditional. So we just simply are
25 going to walk through the process and explain to the Court

1 the plans that are being attacked here look nothing like
2 the plans which had been rejected by the Supreme Court in
3 prior litigation. We don't look anything like those.

4 This is a plan where race was most certainly
5 considered, but that doesn't get you strict scrutiny. So
6 if you've got the strict scrutiny, we certainly believe we
7 could survive that, too, because it must be a compelling
8 state interest to comply with one-person-one-vote but also
9 to comply with the Voting Rights Act, and in this case,
10 we're not simply talking about compliance for purposes of
11 preclearance under Section 5, but we're also talking about
12 compliance under Section 2.

13 *Thornburg v. Gingles* requires the creation of
14 districts where you have racial block voting present which
15 the history of Virginia certainly is an indication of
16 that. We have a substantial legislative record where
17 we've gone around the state and gotten testimony. There's
18 plenty of history of Section 2 litigation in the state of
19 Virginia where they found racial block voting.

20 So there's -- the *Thornburg v. Gingles* series of
21 cases most certainly means that we have to look at
22 discrete minority communities. If we can draw a
23 reasonable district around them that's reasonably compact
24 and we have racial block voting and polarized voting, we
25 have to create those under Section 2.

1 So we're not only talking here about a compelling
2 interest under section -- to get the plan pre-cleared.
3 We're also talking about the needs of Section 2 to get the
4 plan so we're not in a piece of litigation where the same
5 plaintiffs lawyers we have right now are suing us because
6 we didn't create these districts.

7 JUDGE PAYNE: Are you going to offer evidence
8 that all that was taken into account in constructing the
9 plan?

10 MR. BRADEN: Absolutely. No question about that
11 whatsoever. We had a series of hearings around the state.
12 The 55 percent number doesn't come from thin air. It
13 comes from testimony before the House of Delegates.
14 That's to find numbers needed to be able to create
15 functioning minority districts.

16 You know, this litigation -- we should all be
17 very candid. This litigation is not about representation
18 of the minority community. The problem the plaintiffs
19 have with the plan is the fact that after the plan was
20 drawn, it had the political effect that people intended it
21 to have. The vast majority of the incumbents got
22 reelected except for a few democratic white members lost.

23 That's the predominant underlying purpose of the
24 plan. We shouldn't pretend anything else. This Court
25 should be well-aware of that. That's what's going on

1 here. This plan was drawn for political purposes. The
2 effect of the plan in the actual following election was
3 just what was predicted was going to happen.

4 So the notion that race predominated simply flies
5 in the face of reality, both the way the plan looks, the
6 way the plan was constructed, the evidence underlying it,
7 and the effect of the plan. The effect of the plan was

8 some white democratic members of the legislature lost.

9 Has nothing to do with race. It had a lot do with
10 politics.

11 JUDGE PAYNE: Are you saying that you're going to
12 offer evidence that the predominate purpose was to knock
13 out some democrats? Is that what you are saying?

14 MR. BRADEN: Absolutely. That was one of the
15 predominate -- the magic word here, a predominate purpose,
16 the predominate purpose of the plan was to maintain the
17 status quo. That is, in fact -- the recognized purpose of
18 the plan was to maintain the status quo. Because of
19 population changes, certain districts had to be moved
20 around the state.

21 When you move districts around, there is losers.

22 Republicans were in charge. The losers were white

23 democratic members, absolutely. No one should -- we don't
24 need any political scientist from Harvard to tell us the
25 reality of what happened here. The notion that somehow or

1 another there's some standard use of racial polarized
2 voting, I see no history -- the State of Virginia has
3 submitted a number of plans to the Department of Justice
4 for preclearance. I can find no record of the State of
5 Virginia hiring a political science professor to do a
6 racial block voting before doing this submission.

7 The record, I believe even in the *Page* case, the
8 *Page* Court recognized that a racial block voting analysis
9 by political scientists was not necessarily better than
10 the elected members from those districts.

11 The 55 percent number comes from members elected
12 from those districts and people who live in those
13 districts as to what was necessary for the minority
14 community to elect their candidate of choice. It's not a
15 number picked from thin air.

16 JUDGE PAYNE: All right. Now, Judge Lee, Judge
17 Keenan, do either one of you have any questions at this
18 point?

19 JUDGE LEE: I'm ready to hear the evidence in
20 support of oral argument. I think we've already heard
21 some closing arguments now. Thank you.

22 JUDGE PAYNE: We have, haven't we? I have this
23 question: What is the significance in the law of saying
24 that the political result, the objective was to knock
25 democrats out of seats? Does that present a

1 quintessential political gerrymander case that we're
2 dealing with here? If so, what does that do to the legal
3 construct of the case if we accept that view? I'm sure --

4 MR. HAMILTON: Your Honor, this is Mr. Hamilton
5 for the plaintiff. It's no different than the argument
6 that was advanced in the *Page* case and that's always
7 advanced in the *Shaw* line of cases that it's politics, not
8 race, and that's exactly why courts look to the evidence,
9 and what the Court, the Supreme Court has held in these
10 cases is if you're going to use race, and your explanation
11 for using race is that you need to do it in order to
12 prevent retrogression under the Voting Rights Act, then
13 you have to have a strong basis in evidence for that
14 belief, and the strong basis of evidence typically is a
15 racial block voting analysis, and the absence of doing
16 that makes it awfully difficult for the State to say that
17 we had to do this in order to prevent retrogression in a
18 minority -- to allow -- to prevent retrogression from a
19 minority community's ability or opportunity to elect
20 candidates of their choice.

21 This isn't something that's been made up. It's
22 in the Department of Justice regulations that were in
23 evidence last year before this Court and will be in
24 evidence again this year in this case.

25 JUDGE PAYNE: But, Mr. Hamilton, no Court has

1 ever held that a block voting analysis case is the only
2 way to prove what they're proving; is that right?

3 MR. HAMILTON: Fair enough, but it's certainly
4 not the case that it's the opposite. It's not the case
5 that a court has ever said, oh, well, we've had some black
6 delegates say I need a higher number of -- again using
7 race -- black voters in my district in order to get
8 reelected. The constitutional analysis is no different
9 than if you flip that around and you have white delegates
10 saying --

11 JUDGE PAYNE: I understand. I just was asking
12 the question if there's a case that I'm unaware of about
13 that, but the question -- I don't recall in *Page* that
14 there was any evidence or that it was the same as what Mr.
15 Braden just said.

16 In *Page*, it was a combination of the political
17 desire plus the traditional voting -- traditional
18 redistricting criteria that the defendants rode as their
19 defense.

20 Here, we seem to be talking about achievement of
21 a particular political result as the predominate purpose,
22 and to my knowledge, the Supreme Court has never upheld
23 political gerrymandering absent some purpose such as to
24 maintain a balance, fair balance or to achieve fairness.

25 That's why I was asking Mr. Braden the question,

1 whether or not that's what he was doing. So neither one
2 of you see this construct -- this is raising a different
3 issue than is raised in *Page* which is fundamentally what
4 was the predominate purpose, and that's as far as you are
5 going, Mr. Hamilton, and that's as far as you are going;
6 is that correct, Mr. Braden and Mr. Hamilton?

7 MR. BRADEN: It's our belief that you do not get
8 to strict scrutiny until the plaintiffs prove that the
9 predominant purpose was race.

10 JUDGE PAYNE: Okay.

11 MR. BRADEN: Until such time, the Court does not
12 need to consider the issue of strict scrutiny. It's the
13 wrong construct at that stage.

14 JUDGE PAYNE: All right, Mr. Hamilton, you're of
15 the same view, that you are trying this in the same mold
16 as *Page*, and your theory is race was the predominant
17 purpose, and there's no part of your complaint that's any
18 different than that; is that right?

19 MR. HAMILTON: That's correct, Your Honor, and
20 it's very clear from the application of the uniform
21 55 percent --

22 JUDGE PAYNE: You don't need to make the argument
23 again. I think, as Judge Lee said, we heard it. How
24 about these motions *in limine*, have you gotten any notion
25 yet as to whether you're going to have motions *in limine*,

1 need for a carryover day, it will be the 13th. Counsel,
2 do you have anything? Nobody.

3 MR. HAMILTON: No, Your Honor.

4 JUDGE PAYNE: Thank you very much. We look
5 forward to working with you.

6 JUDGE KEENAN: Thank you, Judge Payne.

7 JUDGE LEE: Thank you all, counsel.

8
9 (End of proceedings.)

10
11
12 I certify that the foregoing is a correct
13 transcript from the record of proceedings in the
14 above-entitled matter.

15
16
17 /s/
18 P. E. Peterson, RPR

Date